

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3635 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE FINANCIAL CORPORATION

Versus

GUJARAT SMALL INDUSTRIES CORPORATION LTD.

Appearance:

MR HS MUNSHAW for Petitioner
MR DC DAVE for Respondent No. 1
MR JT TRIVEDI for Respondent No. 3
MR RS SANJANWALA for Respondent No. 4

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 28/09/1999

ORAL JUDGEMENT

Rule. Mr. D.C.Dave waives service of rule on behalf of respondent nos 1 and 2. Mr. J.T.Trivedi waives service of rule on behalf of respondent no.3 and Mr. R.S.Sanjanwala waives service of rule on behalf of respondent no.4.

2. The Gujarat Small Industries Corporation Ltd.

-respondent no.1 has attached the properties belonging to respondent no.4 and put their seals in the course of recovery of dues from the respondent no.4 under the provisions of Gujarat Public Moneys (Recovery of Dues) Act. The petitioner -Gujarat State Financial Corporation has challenged the said action of the Gujarat Small Industries Corporation Ltd. on the ground that the petitioner is the secured creditor and Gujarat Small Industries Corporation Ltd. has no right to attach the properties in question. It is not in dispute that the office premises of the respondent no.4 situated on the Second Floor, Asha Pota Chambers, Navrangpura, Ahmedabad have been mortgaged with the petitioner Corporation. It is also not in dispute that other immoveable properties of the respondent no.4, namely, lands bearing block No.75A (part), 117 (part), 118 (part), and 119 (part) situated at village Santej, Tal. Kalol, Dist. Mehasana and block bearing 45 3/2A situated at village Chhatral, Tal. Kalol, Dist. Mehasana together with structures, erections, godowns and fixed plant & machinery, fixtures & fittings have been mortgaged to the Union Bank of India -respondent no.3 herein and the said Bank has the first charge on the said immoveable properties. The stocks and goods are also hypothecated to the said Bank. The petitioner Corporation has the first charge on the plant and machineries and the Union Bank of India has the second charge on the plant and machineries. It cannot be disputed that the Gujarat State Financial Corporation and Union Bank of India are the secured creditors. The Gujarat Small Industries Corporation has attached the properties and put their seals in purported exercise of power conferred under Sec.137 of Bombay Land Revenue Code. However, it has been held by the Division Bench of this Court in (M/s) Surendrabhai & Company and Another vs. State of Gujarat and Others, (1985 G.L.H. UJ 53), the State cannot claim any right of preference in respect of unsecured claim over the secured debt of the subject and to that extent the provisions of Sec.137 of the Bombay Land Revenue Code are void. Since, Gujarat State Financial Corporation and Union Bank of India are the secured creditors, it follows that the Gujarat Small Industries Corporation Ltd. cannot claim preference in respect of their unsecured dues over the secured claims of the Gujarat State Financial Corporation and Union Bank of India. The action of the Gujarat Small Industries Corporation Ltd of attaching the assets and sealing the office premises in question cannot, therefore, be sustained and is set aside.

3. It is open to the petitioner Gujarat State Financial Corporation and Union Bank of India to proceed to recover their dues in accordance with law.

4. The learned counsel for the respondent no.4 prays that the Gujarat Small Industries Corporation Ltd. should be directed to remove the seal over the office premises in question so that it can have the access to its books of accounts and to get revised audit reports which are to be submitted before B.I.F.R. However the learned counsel for the Gujarat Small Industries Corporation Ltd. seeks 15 days time. Under the circumstances, the Gujarat Small Industries Corporation is directed to take necessary consequential action within 10 days from today. It is not in dispute that the office premises situated in Asha Pota Chambers, Ahmedabad and the properties over which the Union Bank of India has the charge are covered by this order.

5. Rule is made absolute accordingly with no order as to costs.

Date: 29/9/1999. -----
(ccshah)